IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

LEBANON SEABOARD CORPORATION	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:17-cv-548
	)	
ICT ORGANICS, LLC,	)	JURY TRIAL DEMAND
	)	
Defendant.	)	

FILED
HARRISBURG, PA
MAR 3 0 2017

COMPLAINT

Lebanon Seaboard Corporation hereby complains of ICT Organics, LLC, as follows:

THE PARTIES AND JURISDICTION

The Parties

1. Plaintiff, Lebanon Chemical Corporation, (hereinafter "Lebanon"), is a corporation duly incorporated under the laws of the State of Pennsylvania, with its principal place of business at 1600 East Cumberland Street, Lebanon, PA 17042.

2. Upon information and belief, Defendant ICT Organics, LLC, (hereinafter "ICT"), is a corporation incorporated under the laws of the State of Maryland; with its principal place of business at 7000 Golden Ring Road, Suite 9692, Baltimore, MD 21237.

Jurisdiction

3. The present action arises under the laws of trademark infringement and unfair competition under applicable federal laws including, *inter alia*, 15 U.S.C. §§ 1114 and 1125.

4. This Court has original subject matter jurisdiction over the claims set forth herein pursuant to 15 U.S.C. § 1121.

5. Both Lebanon and ICT do substantial business in this judicial district.

6. This Court has personal jurisdiction over Plaintiff Lebanon by virtue of the fact that Lebanon filed this lawsuit in this district, and by virtue of the fact that Lebanon does business in this District.

7. This Court has personal jurisdiction over Defendant ICT by virtue of the fact that ICT does business in this judicial district.

8. Venue in this Judicial District with respect to the claims set forth herein against Defendant is proper pursuant to 28 U.S.C. § 1391.

LEBANON'S TRADEMARK RIGHTS

The Trademark at Issue

9. The trademark at issue in this case is the mark PREEN®.

10. The PREEN® mark was first used in commerce in about 1966 by Plaintiff's predecessor-in-interest, Eli Lilly & Company.

11. The PREEN® mark was registered on the Principal Register of the U.S. Patent and Trademark Office on May 2, 1967, as Registration No. 828,096, in International Class 6, for "herbicide for grass and weed control for flower and ornamental beds". A true and accurate copy of the Certificate of Registration of the PREEN® Trademark is attached hereto as Exhibit A-1. Plaintiff subsequently obtained Federal Trademark Registrations for the PREEN® mark on January 10, 2006 under Registration No. 3,042,789 in Class 1 for "combination fertilizer and herbicides", (Exhibit A-2), and on August 12, 2008 under Registration No. 3,486,597 in Class 31 for "combination wood mulch and herbicides" (Exhibit A-3).

12. The PREEN® Registration No. 828,096 was renewed for a term of ten (10) years from May 2, 2017; PREEN® Registration No. 3,042,789 was renewed for a term of ten (10) years from January 10, 2016; and PREEN® Registration No. 3,486,597 received a Notice of Acceptance of its Declaration under Sections 8 & 15 confirming continued use, on June 25, 2014. True and accurate copies of the Certificates of Renewal and Notice of Acceptance are attached hereto as Exhibits B-1, B-2, and B-3, respectively.

13. As will be outlined more fully below, the mark has been used continuously in commerce since at least 1966, and remains in use by Lebanon.

The Past Use of the Mark

14. Since at least about 1966, Lebanon and its predecessors-in-interest have used the PREEN® mark to identify and sell their brand of herbicide and weed control and fertilizer products.

15. Throughout that period of use, Lebanon and its predecessors-in-interest have expended considerable resources in promoting the PREEN® mark, and in selling products sold under the mark. To date, Lebanon and its predecessors have expended substantial amounts in advertising PREEN®-based products, and hundreds of millions of dollars of PREEN® brand products have been sold throughout the United States.

16. Further, throughout that period of use Lebanon and its predecessors-in-interest have expended considerable resources in monitoring use of the mark to ensure that distributors and licensees did not improperly use the mark, and to ensure that competitors did not unlawfully infringe the mark. That monitoring has resulted in recognition by others of Lebanon's trademark rights in the PREEN® mark, and in licenses to others who desire to use the mark in commerce in the United States.

17. As a further result of the extensive advertising, sales, monitoring, and use, Lebanon has developed extensive brand name recognition and corresponding goodwill in the mark.

ICT'S TRADEMARK INFRINGEMENT

18. On information and belief, Defendant is using its "PREEM" mark for herbicides. Samples of Defendant's packaging and advertising are attached hereto as Exhibit C.

19. Since at least March 1, 2017, when Lebanon notified Defendant of Lebanon's objection to Defendant's use of the PREEM mark, Defendant has had actual notice of Plaintiff's registered PREEN® mark and of Lebanon's claim to rights in the mark.

20. On information and belief, Defendant has been and is offering and selling its fertilizer products throughout the United States in violation of Plaintiff's PREEN® mark.

21. ICT's use of the confusingly similar PREEM mark for ICT's version of a herbicide is likely to cause confusion with Lebanon's herbicide products. Customers are likely to be confused as to the source of origin of ICT's herbicide, ICT's affiliation with Lebanon, and Lebanon's alleged approval of ICT's product. Moreover, customers are likely to be confused into believing that ICT's formulation or product quality is controlled by Lebanon.

22. ICT's use of the PREEM mark will also affect the reputation and business of Lebanon and of Lebanon's PREEN® mark.

23. On information and belief, Defendant is in knowing and willful violation of Plaintiff's rights.

ICT'S UNFAIR COMPETITION

24. In addition to Lebanon's Trademark rights in the PREEN® mark, ICT's use of the term "PREEM" constitutes unfair competition.

25. As indicated above, consumers and others have come to associate the term "PREEN" with Lebanon, the company that makes and sells PREEN®-brand herbicide and fertilizer products.

26. Even if ICT had a right (which it does not) to use the term "PREEM," ICT would also have a duty to make sure that such use would not lead to confusion among consumers as to the affiliation, connection, association, origin, sponsorship, or approval of the products that are advertised and sold with the term "PREEM."

27. ICT use of the term "PREEM" is not being done in a manner, which would assure that customers are not confused. To the contrary, consumers likely will be confused as to the affiliation, connection, association, origin, sponsorship, or approval of ICT's herbicide products which are advertised and sold with the "PREEM" term.

28. On information and belief, ICT is knowingly and willfully using the term "PREEM" in a manner that is likely to cause confusion as to the affiliation, connection, association, origin, sponsorship or approval of ICT goods.

COUNT I: FEDERAL TRADEMARK INFRINGEMENT

29. Plaintiff, Lebanon, incorporates by reference into Count I of its Complaint the averments contained in paragraphs 1-28 of this Complaint.

30. On information and belief, Defendant has used its mark PREEM which is confusingly similar to Plaintiff's federally registered PREEN® trademark, in commerce in connection with the sale, offering for sale, distribution, and/or advertising of herbicide products.

31. Such use is likely to cause confusion, and/or cause mistake, and/or deceive.

32. Defendant's activities constitute a violation of the Lanham Act, 15 U.S.C. § 1114.

33. On information and belief, Defendant refuses to change their advertising and packaging to eliminate the mark "PREEM™" therefrom.

34. Plaintiff's business, goodwill, and reputation have been irreparably harmed by Defendant's activities, and will continue to be irreparably harmed unless Defendant is enjoined.

35. Defendant will on information and belief continue their unlawful activities unless enjoined.

36. Plaintiff's remedy at law is inadequate.

COUNT II: FEDERAL UNFAIR COMPETITION

37. Plaintiff, Lebanon, incorporates by reference into Count II of its Complaint the averments contained in paragraphs 1-36 of this Complaint.

38. On information and belief, Defendant is using the term "PREEM" in commercial advertising and/or promotion in conjunction with ICT fertilizer products and/or services.

39. Such commercial advertising and promotion activities are likely to cause confusion and/or deceive as to the affiliation, connection, association, origin, sponsorship or approval of approval Defendant's products.

40. Defendant's activities constitute a violation of the Lanham Act, Title 15 U.S.C. § 1125.

41. On information and belief, Defendant refuses to change its advertising and packaging to eliminate the term "PREEM" therefrom.

42. Plaintiff's business, goodwill, and reputation have been and will continue to be irreparably harmed by Defendant's activities unless Defendant is enjoined.

43. Defendant will on information and belief continue their unlawful activities unless enjoined.

44. Plaintiff's remedy at law is inadequate.

NOW, WHEREFORE, PLAINTIFF PRAYS FOR THE FOLLOWING RELIEF:

A. An order preliminarily and permanently enjoining Defendant, and its officers, agents, employees, and attorneys, and those in active concert or participation with them from:

(1) using the PREEM trademark, or any other trademark confusingly similar to the PREEN® trademark, in connection with the sale or offer for sale of herbicide products or services; and

(2) using the term "PREEM," or any other term confusingly similar to the PREEN® trademark, in connection with the sale or offer for sale of herbicide products or services.

B. An equitable accounting to Plaintiff of all profits derived by Defendant through its acts of trademark infringement and unfair competition in violation of federal and state law.

C. An award to Plaintiff of all damages incurred by Plaintiff caused by all infringing and/or other unlawful activity by Defendant.

D. A seizure during the pendency of this litigation of any and all publications, brochures, letterhead, flyers, and other materials bearing Defendant's unlawful use of the trademark PREEM.

E. An order that all labels, signs, prints, packages, wrappers, receptacles, advertisements, plates, molds, matrices, devices, and other means of making the same bearing any trade name and/or mark infringing or otherwise violating any of Plaintiff's rights hereunder be delivered up to Plaintiff or the Court for destruction.

F. Plaintiff's attorneys' fees, expenses, and costs associated with this action.

G. That the amounts awarded to Plaintiff as damages or profits be increased to the maximum amount allowed under 15 U.S.C. § 1117 and otherwise by law.

H. An award to Plaintiff of all other and further relief as the Court may deem just and proper under the circumstances.

Respectfully submitted this 30 day of March, 2017

LEBANON SEABOARD CORPORATION

By: ______________________

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COUNSEL FOR PLAINTIFF,
LEBANON SEABOARD CORPORATION

#1384842

EXHIBIT A-1

United States Patent Office

828,096
Registered May 2, 1967

PRINCIPAL REGISTER
Trademark

Ser. No. 248,489, filed June 20, 1966

PREEN

Eli Lilly and Company (Indiana corporation)
740 S. Alabama St.
Indianapolis, Ind. 46206

For: HERBICIDE FOR GRASS AND WEED CONTROL FOR FLOWER AND ORNAMENTAL BEDS, in CLASS 6.

First use June 13, 1966; in commerce June 13, 1966.

A. K. FRAZIER, *Examiner*.

EXHIBIT A-2

Int. Cl.: 1

Prior U.S. Cls.: 1, 5, 6, 10, 26, and 46

Reg. No. 3,042,789

Registered Jan. 10, 2006

United States Patent and Trademark Office

TRADEMARK
PRINCIPAL REGISTER

PREEN

LEBANON SEABOARD CORPORATION (PENNSYLVANIA CORPORATION)
1600 EAST CUMBERLAND ST.
LEBANON, PA 17042

FOR: COMBINATION FERTILIZER AND HERBICIDES, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FIRST USE 12-3-2004; IN COMMERCE 12-3-2004.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 78-428,739, FILED 6-2-2004.

JOHN LINCOSKI, EXAMINING ATTORNEY

EXHIBIT A-3

Int. Cl.: 31

Prior U.S. Cls.: 1 and 46

Reg. No. 3,486,597

United States Patent and Trademark Office Registered Aug. 12, 2008

TRADEMARK
PRINCIPAL REGISTER

PREEN

LEBANON SEABOARD CORPORATION (PENNSYLVANIA CORPORATION)

1600 E. CUMBERLAND ST.

LEBANON, PA 17042

FOR: COMBINATION WOOD MULCH AND HERBICIDES, IN CLASS 31 (U.S. CLS. 1 AND 46).

FIRST USE 12-31-2007; IN COMMERCE 12-31-2007.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 828,096, 1,475,555, AND 3,042,789.

SN 78-980,385, FILED 2-14-2006.

ANTHONY RINKER, EXAMINING ATTORNEY

EXHIBIT B-1

From: TMOfficialNotices@USPTO.GOV
Sent: Monday, August 15, 2016 07:13 AM
To: docketdept@uspatent.com
Subject: Official USPTO Notice of Acceptance and Renewal Sections 8 and 9: U.S. Trademark RN 0828096: PREEN: Docket/Reference No. 5018-98

Serial Number: 72248489
Registration Number: 0828096
Registration Date: May 2, 1967
Mark: PREEN
Owner: LEBANON SEABOARD CORPORATION

Aug 15, 2016

NOTICE OF ACCEPTANCE UNDER SECTION 8

The declaration of use or excusable nonuse filed for the above-identified registration meets the requirements of Section 8 of the Trademark Act, 15 U.S.C. §1058. **The Section 8 declaration is accepted.**

NOTICE OF REGISTRATION RENEWAL UNDER SECTION 9

The renewal application filed for the above-identified registration meets the requirements of Section 9 of the Trademark Act, 15 U.S.C. §1059. **The registration is renewed.**

The registration will remain in force for the class(es) listed below for the remainder of the ten-year period, calculated from the registration date, unless canceled by an order of the Commissioner for Trademarks or a Federal Court.

Class(es):
006

TRADEMARK SPECIALIST
POST-REGISTRATION DIVISION
571-272-9500

REQUIREMENTS FOR MAINTAINING REGISTRATION IN SUCCESSIVE TEN-YEAR PERIODS

WARNING: Your registration will be canceled if you do not file the documents below during the specified time periods.

What and When to File: You must file a declaration of use (or excusable nonuse) **and** an application for renewal between every 9th and 10th-year period, calculated from the registration date. See 15 U.S.C. §§1058, 1059.

Grace Period Filings

The above documents will be considered as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

*****The USPTO WILL NOT SEND ANY FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS. THE REGISTRANT SHOULD CONTACT THE USPTO ONE YEAR BEFORE THE EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.*****

To view this notice and other documents for this application on-line, go to http://tdr.uspto.gov/search.action?sn=72248489. NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.

The above documents will be considered as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

The USPTO WILL NOT SEND ANY FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS. THE REGISTRANT SHOULD CONTACT THE USPTO ONE YEAR BEFORE THE EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.

To view this notice and other documents for this application on-line, go to http://tdr.uspto.gov/search.action?sn=72248489. NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.

EXHIBIT B-2

From: TMOfficialNotices@USPTO.GOV
Sent: Wednesday, January 6, 2016 11:00 PM
To: docketDept@uspatent.com
Subject: Official USPTO Notice of Acceptance and Renewal Sections 8 and 9: U.S. Trademark RN 3042789: PREEN: Docket/Reference No. 5018-451

Serial Number: 78428739
Registration Number: 3042789
Registration Date: Jan 10, 2006
Mark: PREEN
Owner: LEBANON SEABOARD CORPORATION

Jan 6, 2016

NOTICE OF ACCEPTANCE UNDER SECTION 8

The declaration of use or excusable nonuse filed for the above-identified registration meets the requirements of Section 8 of the Trademark Act, 15 U.S.C. §1058. **The Section 8 declaration is accepted.**

NOTICE OF REGISTRATION RENEWAL UNDER SECTION 9

The renewal application filed for the above-identified registration meets the requirements of Section 9 of the Trademark Act, 15 U.S.C. §1059. **The registration is renewed.**

The registration will remain in force for the class(es) listed below for the remainder of the ten-year period, calculated from the registration date, unless canceled by an order of the Commissioner for Trademarks or a Federal Court.

Class(es):
001

TRADEMARK SPECIALIST
POST-REGISTRATION DIVISION
571-272-9500

REQUIREMENTS FOR MAINTAINING REGISTRATION IN SUCCESSIVE TEN-YEAR PERIODS

WARNING: Your registration will be canceled if you do not file the documents below during the specified time periods.

What and When to File: You must file a declaration of use (or excusable nonuse) **and** an application for renewal between every 9th and 10th-year period, calculated from the registration date. See 15 U.S.C. §§1058, 1059.

Grace Period Filings

The above documents will be considered as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

*****The USPTO WILL NOT SEND ANY FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS. THE REGISTRANT SHOULD CONTACT THE USPTO ONE YEAR BEFORE THE EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.*****

To view this notice and other documents for this application on-line, go to http://tdr.uspto.gov/search.action?sn=78428739. NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.

The above documents will be considered as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

The USPTO WILL NOT SEND ANY FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS. THE REGISTRANT SHOULD CONTACT THE USPTO ONE YEAR BEFORE THE EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.

To view this notice and other documents for this application on-line, go to http://tdr.uspto.gov/search.action?sn=78428739. NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.

EXHIBIT B-3

From: TMOfficialNotices@USPTO.GOV
Sent: Wednesday, June 25, 2014 11:01 PM
To: docketDept@uspatent.com
Subject: Official USPTO Notice of Acceptance/Acknowledgement Sections 8 and 15: U.S. Trademark RN 3486597: PREEN: Docket/Reference No. 5018-478

Serial Number: 78980385
Registration Number: 3486597
Registration Date: Aug 12, 2008
Mark: PREEN
Owner: Lebanon Seaboard Corporation

Jun 25, 2014

NOTICE OF ACCEPTANCE UNDER SECTION 8

The declaration of use or excusable nonuse filed for the above-identified registration meets the requirements of Section 8 of the Trademark Act, 15 U.S.C. §1058. **The Section 8 declaration is accepted.**

NOTICE OF ACKNOWLEDGEMENT UNDER SECTION 15

The declaration of incontestability filed for the above-identified registration meets the requirements of Section 15 of the Trademark Act, 15 U.S.C. §1065. **The Section 15 declaration is acknowledged.**

The registration will remain in force for the class(es) listed below for the remainder of the ten-year period, calculated from the registration date, unless canceled by an order of the Commissioner for Trademarks or a Federal Court.

Class(es):
031

TRADEMARK SPECIALIST
POST-REGISTRATION DIVISION
571-272-9500

REQUIREMENTS FOR MAINTAINING REGISTRATION

WARNING: Your registration will be canceled if you do not file the documents below during the specified time periods.

Requirements in the First Ten Years

What and When to File: You must file a declaration of use (or excusable nonuse) and an application for renewal between the 9th and 10th years after the registration date. See 15 U.S.C. §§1058, 1059.

Requirements in Successive Ten-Year Periods

What and When to File: You must file a declaration of use (or excusable nonuse) and an application for renewal between every 9th and 10th-year period, calculated from the registration date. See 15 U.S.C. §§1058, 1059.

Grace Period Filings

The above documents will be considered as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

*****The USPTO WILL NOT SEND ANY FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS. THE REGISTRANT SHOULD CONTACT THE USPTO ONE YEAR BEFORE THE EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.*****

To view this notice and other documents for this application on-line, go to http://tdr.uspto.gov/search.action?sn=78980385. NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.

What and When to File: You must file a declaration of use (or excusable nonuse) and an application for renewal between every 9th and 10th-year period, calculated from the registration date. See 15 U.S.C. §§1058, 1059.

Grace Period Filings

The above documents will be considered as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

The USPTO WILL NOT SEND ANY FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS. THE REGISTRANT SHOULD CONTACT THE USPTO ONE YEAR BEFORE THE EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.

To view this notice and other documents for this application on-line, go to http://tdr.uspto.gov/search.action?sn=78980385. NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.

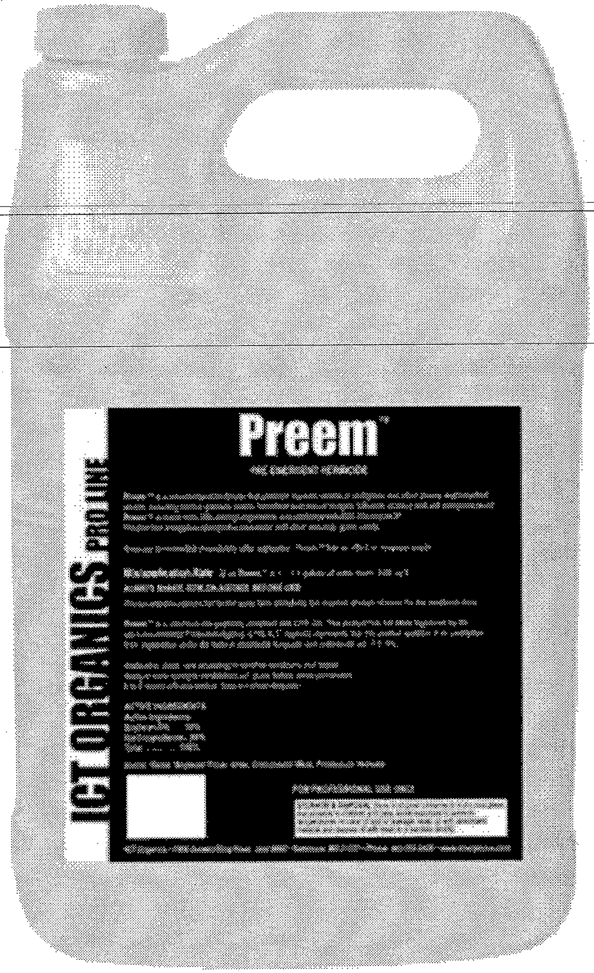
EXHIBIT C

PREEM

Preem provides superior control of crabgrass and other grassy and broadleaf weeds, including annual grasses, classic broadleaf and annual sedges. Effective on hard and soft crabgrass seed.

- Preem has a negative allelopathic interaction with dicot and crab grass seeds
  Area can be reseeded immediately after application, Preem has no effect on monocot seeds
  Mix/application Rate: 32 oz Preem in 1 - 1.5 gallons of water treats 1000 sq ft. More water can be added to mix to facilitate application
  ALWAYS SHAKE, STIR OR AGITATE BEFORE USE: Always add this product last to the spray tank containing the required amount of water for the treatment area.

- Application dates vary according to weather conditions and region. Apply in early spring to established turf grass before weed germination. Late spring application for warm season weeds. 6 to 8 weeks efficacy control, does not photo-degrade



item #	description	price	dimensions	
90-5700-01	**PREEM**	$25.87	5"L x 5"W x 10"H	**Add to Cart**
90-5700-02	**PREEM 4 Gallon Case**	$103.48	13"L x 13"W x 13"H	**Add to Cart**

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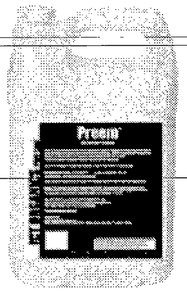

$25.87 each

PREEM One Gallon Jug

1 Add to cart

ICT Organics Preem™ Pre-Emergent Herbicide is a soy based preemergent that provides superior control of crabgrass and other grassy, broadleaf weeds, including annual sedges. Efficacy control lasts for 6-8 weeks, much longer than corn gluten and at about half the price.

For sale in NY, CT, MA, MD, NJ, PA, VA and WI only

Details | Mixing Rates | Reduced Risk | Documentation

Preem™ has no effect on turfgrass or turfgrass seeds. The treated area can be reseeded immediately providing your clients with a denser turf and no wait time

We're live!

INFORMATION

487 East Main ST. Suite 160

Mt. Kisco, NY 10549

wholesale@compostwerks.com

Toll Free:
(844) 266-9375

Business hours:
M-F 8:00 AM to 4:30 PM EST

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